United States Court of Appeals

for the Second Circuit

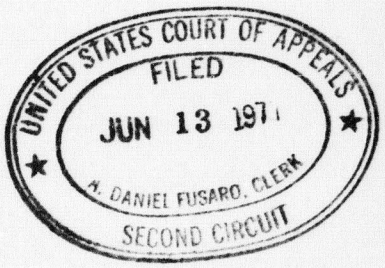
APPELLANT'S REPLY BRIEF

ORIGINAL

77-7240

To be argued by
MILTON S. GOULD

United States Court of Appeals
For The Second Circuit



ROBERT PRATHER,
Plaintiff-Appellant,

against

AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA and JOHN J. SCANLON,
Defendants-Appellees.

BRS

ON APPEAL FROM AN ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

REPLY BRIEF FOR PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT

This brief is submitted on behalf of plaintiff-appellant Robert Prather ("Prather"), for the purpose of replying to the briefs filed by Avis, Inc. ("Avis"), Trustee Richard Joyce Smith (the "Trustee"), and the United States. This reply brief deals only with certain events which have occurred since the filing of the original briefs by the parties. With regard to other arguments raised by Avis, the Trustee and the United States, the Court is respectfully referred to appellant's main brief ("main br.").

SUPPLEMENTAL STATEMENT OF FACTS

The Court is respectfully referred to the Supplemental Statement of Facts contained in the Reply Brief of Fuqua Industries, Inc. ("Fuqua") which sets forth facts relevant to the instant appeal regarding a second offer by Fuqua to purchase the Avis common stock held by the Trustee (the "Trust Property") and the rejection by the Avis board of directors of an offer by Norton Simon, Inc. to purchase the Trust Property (the "Norton Simon offer").

POINT I

THE INSTANT APPEAL IS NOT MOOT

The arguments set forth in Fuqua's Reply Brief as to why Fuqua's appeal in United States v. International Telephone and Telegraph Corp., et al. (Docket No. 77-6080) is not moot also apply to the instant appeal and will not be repeated here. Rather this brief will set forth the reasons why this appeal is by no means moot from the point of view of Prather and the other public stockholders of Avis.

As set forth fully in appellant Prather's main brief herein (main br. 31-38), the effect of the defective proxy solicitation for the Avis annual meeting, absent action by this Court, will be to deprive the Avis stockholders of the benefits of the (by now second) offer by Fuqua and possible offers by other parties to purchase the Trust Property and to offer Avis stockholders equivalent value for their Avis stock. The Trustee now proposes to sell the Trust Property to Norton Simon over the opposition of the Avis board and without any consideration of the second Fuqua offer* or possible offers by other parties.

*The advantages of the Fuqua offer to Avis stockholders are set forth in Fuqua's Reply Brief. Among these advantages (and in contrast to the Norton Simon offer) are that the Fuqua offer would be tax-free to Avis stockholders and that it would provide them with value of at least $20.75 per share.

Further, if Judge Blumenfeld directs the Trustee to accept the Norton Simon offer and the instant appeal is declared moot the position of the Avis stockholders will be absolutely untenable. They will be stockholders in a company 47% owned by Norton Simon whose merger offer the Avis board has already rejected. They will be locked into a decidedly junior partnership with Norton Simon, Inc. and will be subject to whatever plans Norton Simon, Inc. has for them and Avis, now that its merger offer has been rejected.

The issues raised in the instant appeal are therefore not moot -- rather recent events make more urgent than ever this Court's consideration of these issues and the situation of appellant and the other public stockholders of Avis.

CONCLUSION

For all of the foregoing reasons, as well as those set forth in appellant's main brief, it is respectfully requested that the relief sought by appellant be granted.

Respectfully submitted,

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Service of ~~three~~ Two (2) copies of the within REPLY BRIEF is admitted this 13TH day of JUNE 1977

Whitman & Ransom (by KDM)
attys for Trustee-Respondent

Service of ~~three~~ Two (2) copies of the within REPLY BRIEF is admitted this 13TH day of JUNE 1977

(2) COPY RECEIVED
6-13- 1977
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
By Clara A Lacey